IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 3869 of 2007()

CRA.105/2004 of ADDL. SESSIONS COURT-II, MAVELIKKARA
CC.516/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, HARIPAD

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REVN. PETITIONER:

MANOHARAN, CHAKKALAYIL VEEDU,
NANGIARKULANGARA MURI, CHEPPAD VILLAGE,
KARTHIKAPPALLY TALUK.

BY ADV. SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENTS:

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1. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. MADHAVAN @ VASAVAN,
   BINU BHAVAN, PUTHIYAVILA MURI,
   KANDALLOOR VILLAGE KARTHIKAPPALLY P.O.,
   ALAPPUZHA DIST.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3869 of 2007

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Dated this the 29th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.516 of 2002 on the file of the J.F.C.M-I, Haripad challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have

considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. The learned counsel for the 2nd respondent/ complainant submits that the revision petitioner/accused has discharged his liabilities under the cheque in question and nothing more remains to be paid. If so, the same shall be treated as a sentence of fine for the conviction under Section 138 of the Negotiable Instruments Act. The sentences imposed by the court below are set aside and the petitioner is directed to be released from prison forthwith unless his continued detention if found necessary in connection with any other case against him.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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